IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mukesh Singh @ Yogender Singh @ Mahendra Singh Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.509/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 28-3-2003 in Sessions Case No.13/2002 passed by Sh. Harphool Singh Pilania, RHJS, Additional Sessions Judge (Fast Track) No.2, Sikar Camp Neemka Thana.

Date of Judgment: March 22, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Samander Singh, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

The appellant was put to trial before learned Additional Sessions Judge (Fast Track) No.2, Sikar camp Neemka Thana, who vide judgment dated March 28, 2003 convicted and sentenced him as under:-

U/s.307 IPC:

To undergo rigorous imprisonment for five years and fine of Rs.1,000/- in default to further suffer three months rigorous imprisonment.

U/s.324 IPC:

To undergo two years rigorous imprisonment and fine of Rs.100/- in default to further suffer fifteen days rigorous imprisonment.

U/s.323 IPC:

To undergo one year rigorous imprisonment.

U/s.341 IPC:

Fine of Rs.500/- in default to suffer five days rigorous imprisonment.

The substantive sentences were ordered to run concurrently.

2. On November 10, 2001 at 3.30 PM parcha bayan (Ex.P-3) of injured Jitendra Kumar (Pw.1) was recorded wherein he stated that on the said day around 2.30 PM while he was returning from Ratanpura to his Dhani the appellant inflicted knife blows on his arm, chest and abdomen. On that parcha bayan case was registered against appellant and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2 Sikar Camp Neemka Thana. Charges under sections 307, 341, 324 and 323 IPC were framed. The appellant denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. I have heard rival submissions and weighed the material on record.

4. Jitendra (Pw.1) vide injury report (Ex.P-9) received following injuries:-

1. Stab wound left side of abdomen on out most (lateral side) and on the level of umbilicus 2.3 x 2cm depth could not be illustrated cm due to seriousness.
2. Incised wound on left and middle of abdomen 4cm x 2cm x

3cm wound start from middle to left lateral side
3. Abrasion on epitomes 4cm x 2cm
4. Abrasion back side of left arm 3 x 2cm

5. In his deposition Jitendra (Pw.1) supported parcha bayan and stated that the appellant caused injuries on his abdomen with knife. Testimony of Jitendra finds corroboration from the evidence of Sadhu Ram (Pw.3), Rameshwar (Pw.4), Prabhat (Pw.5) and Sultan (Pw.10). Having closely scrutinised the evidence of eye witnesses examined at the trial, I find that nothing favourable to the appellant could be elicited in the cross examination.

6. Dr.Madav Singh (Pw.15) who examined the injuries of Jitendra deposed that injuries sustained by Jitendra was grievous in nature and dangerous to life. The injury was so serious that Jitendra was referred to Jaipur for treatment.

7. In Girija Shankar Vs. State of UP (AIR 20004 SC 1808) the Apex Court had occasion to interpret Section 307 IPC and it was indicated as under:- (para 13)

> "... To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of

> the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

8. When the factual background of the instant case is considered in the background of true ambit of Section 307 IPC the inevitable conclusion is that the appellant has been rightly convicted under section 307 IPC.

9. For these reasons, the appeal being devoid of merit stands dismissed. Conviction and sentence awarded to appellant under sections 307, 324, 323 and 341 IPC are maintained.

(Shiv Kumar Sharma)J.

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